BRUNEI REPORTS

PUBLIC PROSECUTOR v. EMRAN BIN NASIR

[O.C.J. (Roberts C.J.) April 3, 8 & 9, 1986]

[Bandar Seri Begawan – Criminal Trial No. 4 of 1986]

Penal Code, ss. 354 & 375 – Rape – Outraging modesty – Need for corroboration – Sentence.

Police Force – Offence of rape by one of its officers – Public interest requires heavy sentence.

On the afternoon of June 2, 1985, the complainant, Leong Hai Len and her husband, Sali, left home about 4.15 p.m. and walked to the Lion Restaurant where she was working. Outside the restaurant a blue car containing two policemen, one of whom was the defendant, stopped near them. After a conversation between the two men and Sali, both husband and wife were taken to the Central Police Station in Bandar Seri Begawan. The two officers took Hai Len and Sali upstairs to the main C.I.D. room where Sali was questioned. The defendant then took Hai Len to a smaller office where while they were alone, he assaulted and raped her. Later both husband and wife were released. On their way home Hai Len told Sali that she was raped by one of the policemen. The defendant was charged under section 375 and section 354 of the Penal Code.

Held: (1) to amount to corroboration, the evidence must confirm in some important respect to the girl's evidence that intercourse took place, that it took place without her consent and that it was the defendant who committed the offence. Evidence of the distress of the victim of a sexual offence soon after the offence can be regarded as corroboration. On the evidence the defendant was accordingly convicted;

(2) it is a serious aggravation of what is in itself a grave crime, that the defendant abused his position of trust as a guardian of the law, with a duty to uphold it. Such conduct must constitute a blow to public confidence in the Force and damage the fine reputation which it has worked so hard to earn. The defendant was sentenced to 8 years' imprisonment on the first charge and 1 year on the second charge, the sentences to run concurrently.

CRIMINAL TRIAL.

Kifrawi Kifli (Deputy Public Prosecutor) for State.

Defendant in person.

Cur. Adv. Vult.

Roberts C.J.: *Preliminary* – The defendant, who was at the material time a police officer attached to the C.I.D. at the Central Police Station in Bandar Seri Begawan, is charged with the rape, contrary to section 376 of the Penal Code, of Leong Hai Len, in a room in that police station on the evening of June 2, 1985.

By section 375 of the Penal Code, a man is said to commit rape if he has sexual intercourse with a woman under circumstances falling within any of five descriptions, including:

(a) against her will;

(b) without her consent;

(c) with her consent, when her consent has been obtained by putting her in fear of death or of hurt.

[Paragraphs (d) and (e) are not applicable in this case.]

According to the "Explanation" annexed to the section "Penetration is sufficient to constitute sexual intercourse necessary to the offence of rape."

The prosecution case was that the defendant had sexual intercourse with Leong Hai Len ("Hai Len") without her consent and against her will. It would be sufficient if it was able to establish either.

I remind myself that the burden lies on the prosecution to establish the guilt of the defendant beyond reasonable doubt and that that burden never shifts.

Evidence of complainant

The principal prosecution witness is, of course, the complainant. If I do not find her to be a credible witness, that must be an end of the case.

Hai Len was born on May 8, 1968 and was only 17 years at the time of the occurrence. She was married to Sali anak Edop, who also gave evidence, on April 13, 1985. She left school, a month before that, when she became engaged to him.

In spite of her youth, she gave her evidence clearly and audibly and did not seem to be unduly nervous in spite of the intimate nature of some of the questions.

She described how, on the afternoon of June 2, 1985, she and her husband, Sali, left home about 4.15 p.m. and walked to the Lion Restaurant where she was working.

Outside the restaurant, a blue car containing two men, one of whom was the defendant and the

other, a police officer, P.C. 2113 Mohammad bin Bustam ("P.C. Mohamed"), stopped near them.

After a conversation between the two men and her husband, both of them were taken to the Central Police Station in Bandar Seri Begawan.

The two officers took Hai Len and Sali upstairs to the main C.I.D. room where Sali was questioned about their passports, which he said were in the possession of their employers.

Sali was then taken to another room by P.C. Mohamed.

The defendant asked her a number of questions, some of a suggestive nature. He next asked her for the measurements of her waist, hips, chest and body and purported to take these measurements with his hands on her waist, thighs and breasts, telling her this was a police regulation.

While he was doing this, P.C. Mohamed entered and seemed to be jotting down the measurements on a piece of paper. After the defendant had finished measuring her, he took her to a smaller office, which led off to the C.I.D. room. Once they were inside that office, the defendant, having closed the door, said he wanted to measure her private parts and asked her the size of her husband's private parts.

When she protested that such a measurement should be done by a woman, he replied "The person who arrests should also examine and measure the person arrested."

The defendant then made her lift her dress and put his hand inside her pants and said he would "put his private part into my private part in order to take measurements of my private part."

When she cried and said "I do not want it," he threatened to send her to the hospital where an Indian with a bigger private part than his would do the same. He removed her pants when he was supposedly measuring her.

The defendant removed his trousers and underpants and pushed her to the floor.

He asked her to hold his penis and, when she refused, put her hand on it and pushed it into her private parts.

She felt him inside her as he moved up and down on top of her. He was only inside her for a short while. Then she felt the sperm come out of him.

She stood up, still crying, and pulled her pants back on.

The defendant warned her that she should not tell anyone and that her name and that of her husband were on police records.

If she told anybody about the matter, both of them would be called in again and would be arrested for three weeks.

Hai Len, when examined by Dr. Lamplugh, a few hours later, had no marks, scratches or bruises on her.

Indeed, she admitted that she did not put up any physical resistance to the defendant. Nor did she shout for help, though she cried softly in the Inspector's room.

She said that she dared not struggle because she was afraid and that when she cried he told her harshly not to cry.

She was very frightened and did not know what to do, although she objected to what he was doing and did not agree to it.

After he had raped her, she said, the defendant took her back into the C.I.D. room, where P.C. Mohamed was sitting alone.

The defendant, at P.C. Mohamed's suggestion, went and fetched Sali to the office. They were allowed to leave soon afterwards, the defendant telling them to use the rear staircase of the building.

On their way to their house, which was only a five minute walk from the police station, she told Sali "that man has raped me." She did not then know the defendant's name.

As soon as they got home, Sali told her father, who took them to the police station to make a complaint. This was recorded by Sgt. Bakar, at 2040 that evening in the following terms:

"2.6.85 at about 1615 hours, I and my husband, Sali ak Edop, were brought by 2 members of the C.I.D. Police. I don't know their names. But I can recognise them by their appearances. On arrival at the C.I.D. room, one of them, the face shape of betel leaf, with beard and a mole, colour

of skin 'hitam manis' brown. Height about 5' plus. He forced me to have intercourse with him in the C.I.D. room B.S.B." – P22.

Sgt. Bakar and Hai Len both signed the entry in the Crime Report Book.

Identification

An identification parade was held on June 3, at about 1410. The defendant and nine other police officers took part. He was invited to choose his position and did so.

Hai Len was brought into the room and pointed out the defendant as the person who raped her.

Evidence of Sali Anak Edop

Sali confirmed his wife's evidence as to what occurred in the street near the Lion Restaurant, saying that the defendant had asked him for his identity card, which he could not produce.

He and his wife were taken to the police station, to the C.I.D. room. He was led thereafter to a small room by P.C. Mohamed. While they were there, P.C. Mohamed answered a phone call and took him to another room where they waited, though P.C. Mohamed went in and out several times.

He was later taken back to the C.I.D. room where he saw his wife looking afraid and crying.

P.C. Mohamed asked the defendant to release them about three times left the C.I.D. room and did not return.

The defendant told him to be co-operative and report any gambling and to use the back staircase to leave, which they did about 8.00 p.m.

On the way home, Hai Len told him that "that man" had raped her. As soon as they got there, he told her parents and they all returned to the police station to make a report.

Evidence of Leong Ting Hwa

Leong is Hai Len's father. His evidence supports that of Sali to the effect that, soon after his daughter arrived home on the evening of June 2, she told him that a very bad incident had taken place at the police station. He thought that she meant that she had been raped by a member of the police, who had told her to go home and not mention it to anyone or she would be arrested. Leong therefore took his daughter and her husband to the police station to make a report.

Medical Evidence

Various items of clothing and specimens of blood and saliva were examined by Mrs. Ng Gek Kwee, a very experienced Scientific Officer, attached to the Department of Scientific Services in Singapore.

It is, I think, sufficient for me to summarize her evidence as follows.

No stains were found on the dress or brassiere which Hai Len was wearing at the time of the incident.

Seminal stains were found on the petticoat and pants which she was then wearing. The stains on the petticoat could not be grouped. Those on the pants were group B.

No stains were found on the clothing taken from the defendant, that is to say on the trousers and T-shirt which Hai Len says he was wearing at the time, nor on the underpants which she said he was not then wearing.

Blood and saliva specimens were taken from Sali, the defendant and Hai Len.

Sali has Group O blood and is a non-secretor. The defendant has Group B blood and is a Group B secretor. Hai Len has Group O blood and is a Group O secretor.

Dr. Ng's conclusion is that the seminal stains (Group B) found on Hai Len's pants could not have come from the husband (Group O) but could have come from the defendant, who is a Group B secretor.

Dr. Mathew, who examined a swab taken from the vagina of Hai Len, at 1.30 a.m. on June 3, found that it contained sperms and was of the opinion that this was consistent with intercourse having taken place about 6 to 8 hours earlier – *i.e.* between about 1730 and 1930 on June 2.

Dr. Lamplugh examined Hai Len at about 1.20 a.m. on the 3rd and took the swab examined by

Dr. Mathew. She found no scratches or bruises on Hai Len's body.

Dr. Day examined the defendant at about the same time and found no scratch marks or signs of any struggle on the defendant's body.

The location

The rape is said to have taken place in a small office leading off the main C.I.D. office. While the main walls of both were of bricks or concrete, the wall between them was of plywood and would not have been sound proof, so that loud noises in the small room would have been easy to hear in the C.I.D. room.

The glass panel on the door between the two offices was pasted over with paper, so that it was not possible to see through it.

Hai Len described how the defendant opened the door as they went into the small office by poking something sharp into the lock. He did the same to open the door again as they left.

This is corroborated by Inspector Murad, who said that the lock was faulty and that the door could only be opened by someone who knew that it was necessary to push a sharp object into a hole which had been made in the woodwork, close to the door handle, for this purpose.

The incident took place on a Sunday evening, when nobody was on duty in that C.I.D. room. Neither Hai Len nor Sali mentioned having seen anyone else there except the defendant and P.C. Mohamed.

Thus the rape occurred in a place where, in ordinary circumstances, discovery would have been most likely. However, the risk was far less on a Sunday evening provided that the assailant could be sure that there would be no loud protests from his victim.

The defendant must have known of the peculiarity of the lock on the door, which meant that nobody could enter or leave. And unless she saw him operate it, it is difficult to see how Hai Len could have known of it, as she did.

The statement

The defendant was interviewed on June 3 by P.C. Mohamed Zaini at 11.05. After caution, he made a long statement in his own handwriting, the admissibility of which he did not challenge.

In the statement, he agrees that he and P.C. 2113 Mohamed made enquiries of a man and girl in the street near the Lion Restaurant on the afternoon of June 2 and that they took them to the police station, arriving about 1715 and taking them to the C.I.D. room by the back door.

P.C. Mohamed took the man into Inspector Hasnani's room, while he interviewed the girl.

P.C. Mohamed later took the man through the C.I.D. room to S/Sgt. Roger's room.

He admits that he took the girl into Inspector Hasnani's room, but said that he did not close the door.

They were hardly in there for five minutes before they went back into the C.I.D. room, where he asked the man further questions, and being satisfied that he had a passport he let them go.

Thus, the defendant, in this statement has, by implication, admitted that he did arrest a girl and her husband, who could, in view of the other evidence, only have been Hai Len and Sali and that he was alone with her in Inspector Hasnani's room at the time when she says she was raped by him.

He does not, although he has been informed of the charge, refer to the allegation directly in his statement, though it cannot, in any sense, be regarded as an admission of the charge.

About 12.30 a.m. on June 3, Chief Inspector Ismail went to the defendant's flat and told him that he had been instructed to call him to the station because a report had been lodged by a Chinese woman alleging rape by the defendant, to which he replied "Let her make a report."

Evidence of P.C. 2113 Mohammad bin Bustam

P.C. Mohamed confirmed that he and the defendant were on duty together on June 2, 1985 and that about 4.45 p.m., they stopped and questioned a man (whom he discovered to be Sali ak Edop) about his passport. Both the man and the girl, who was with him (whom he found out was Leong Hai Len), were taken to the C.I.D. office.

The defendant told him to take the man into

Inspector Hasnani's office which he did, asking him some questions about his passport. A few minutes later, the defendant then told him to take the man to S/Sgt. Roger's room, which he did.

Later, he returned to the C.I.D. office, where the girl and the defendant were standing up.

He heard the defendant say that he wanted to measure the girl's breasts and thighs. He was fiddling with a typewriter near the Inspector's office and did not see the defendant measuring the girl, though he saw him raise his hands. Although the defendant asked him to write down the measurements, he did not watch nor record any.

Shortly after this, the defendant took the girl into Inspector Hasnani's office. The door of the room remained open. He stayed for about five minutes, not hearing a sound from the office where the defendant and the girl were. He heard no questions asked, and was so close that he would have heard if there had been any.

He went back to Sgt. Roger's office for a while before returning again to the C.I.D. room and sitting by the typewriter for about 15 minutes. Again there was utter silence from the small office, although the door was open all the time.

Once more, he returned to Sgt. Roger's office and phoned to the Inspector's room, asking the defendant to let them go. The defendant told him to continue his investigations. After some time, he went back to the C.I.D. room and saw the defendant and the girl entering it from the Inspector's office.

I found P.C. Mohamed a thoroughly unconvincing witness, shiftly and evasive but not as stupid as he would have liked to have appeared.

He may not, perhaps, have suspected that anything improper was likely to occur, until he heard the defendant announce his intention of measuring the girl's breasts and thighs. He admitted to me that he knew this was wrong, but pleaded that he saw nothing. I have no doubt that he did see the defendant handling the girl.

When he says that he sat close to the door of the Inspector's room for two periods, of five and fifteen minutes, and heard not a single question, not a sound, just utter silence from that room, where the defendant himself admits he was with Hai Len, I do not believe him.

I have no doubt that, having seen the defendant measuring the girl and taking her into the Inspector's office, he suspected that something wrong was in progress there but was not prepared to interfere.

Nor do I believe him when he says that the door was open all the time. I accept Hai Len's testimony that it was shut and I think P.C. Mohamed was lying to try to protect his former colleague and because he feared that, if he admitted to suspecting what his colleague was doing, he would find himself in trouble.

The defence

The defendant elected to give evidence on oath in his own defence.

He confirmed that he and P.C. Mohamed had questioned Sali near the Lion Restaurant, on the afternoon of June 2, about his passport and that, when he was unable to produce it, they took him and his wife to the Central Police Station, B.S.B. for further enquiries.

When they reached the C.I.D. room, P.C. Mohamed took Sali to Inspector Hasnani's office to question him further, while he interviewed the girl, whom he agreed was the complainant, in the C.I.D. room.

P.C. Mohamed later took the man from the Inspector's office to Sgt. Roger's office, which is along the corridor on the same floor.

He continued to interview the girl and admitted that, when P.C. Mohamed returned to the C.I.D. room, he told the girl that he wanted to measure her breasts and thighs.

He explained this by saying that he said it "accidentally," whatever that means, but that he did not touch her.

He next took the girl into the Inspector's office because he thought that P.C. Mohamed had left a piece of paper there, recording his interview with the husband.

He said that he searched the office for five minutes but found nothing. All the time, the girl and he were standing. He did not speak a word to her.

When asked why he had to take the girl there

when he was only going to look for a piece of paper, he gave no answer.

He denied that he had touched the girl at all in the office and asserted that her story was wholly untrue. He thought that she might have made it up because she bore a grudge against him for speaking harshly to her when he was questioning her in the police station.

Conclusion

I warn myself that, on a charge of rape, it is dangerous to convict on the evidence of the complainant alone, since experience has shown that female complainants have told false stories for various reasons. However, it is open to me, giving full weight to the warning that it is dangerous for me to convict without corroborative evidence, if I conclude that the complainant is, without doubt, speaking the truth.

In considering whether there is corroboration of Hai Len's evidence, I note:

(a) That evidence of the distress of the victim of a sexual offence, soon after the offence, can be regarded as corroboration. I therefore so regard the evidence of Sali, that she looked afraid and was crying when she emerged from the Inspector's office.

(b) The failure of the defendant to deny any offence when charged is not evidence against him and cannot amount to corroboration. I therefore ignore his reply "Let her report," when told there was a report of rape against him, as having no probative effect.

(c) Evidence that the victim of a sexual assault made a complaint soon afterwards, does not corroborate her evidence, though it is admissible as evidence of the consistency of conduct of the complainant with the story told by her in the witness box and intending to negative her consent.

She did complain, that she had been raped, very soon after leaving the police station, to her husband, repeating her complaint a few minutes later to her father and not long after that to Sgt. Bakar.

I therefore find that her conduct on June 2 after the incident was consistent with the story which she have given in evidence.

To amount to corroboration, the evidence must confirm in some important respect to the girl's evidence that intercourse took place, that it took place without her consent and that it was the defendant who committed the offence.

Mrs. Ng's evidence, as to the finding of semen on Hai Len's pants, of a group which was not that of her husband, but could be that of the defendant supports her evidence that intercourse took place on June 2 with someone who was not her husband. And Dr. Mathew's estimate of the age of the sperms puts the act of intercourse at about the time when she was being questioned in the police station. There is no evidence which suggests that the girl had the opportunity to have intercourse with anyone else during the relevant period.

Also there is ample supporting evidence, from her husband, from P.C. Mohamed and from the defendant's own evidence, that the defendant was with Hai Len, at the time when she alleges and in the place where she says the rape occurred. Furthermore, her story is supported by the defendant's own admission (and the evidence of P.C. Mohamed) that he told her that he wanted to measure her breasts and thighs, though he denied that he touched her.

The only issue on which there is no support for her evidence is her assertion that she did not give her consent to intercourse with the defendant and that she was so frightened of him that she submitted without a struggle or any shouts of protest or cries for help.

I note, however, that it is not the defence that she consented, but that intercourse never took place at all.

I find that there is independent evidence of a significant character which tends to confirm her testimony. Even if there had been none, I would still have had no hesitation in accepting her evidence of the events on June 2, and would have been prepared to convict on the basis of that evidence alone even if it had been uncorroborated.

I accept Hai Len as a truthful and reliable witness. She was barely 17 at the time, recently married to a foreigner who had been in trouble with his passports in the past and deeply in awe of the police.

I believe that, when confronted by a police officer who behaved as the defendant did, she did

not know how to react. And that, when he started to remove her pants, she was paralysed with fear and incapable of resistance. I am sure that she submitted, but am equally certain that she did not consent. I find that the defendant forced himself upon her and that the sexual intercourse which took place, as I find it did, was without her consent and against her will and that the defendant knew this.

The defendant, like P.C. Mohamed, was a poor witness, who answered the easy questions quickly and dealt with awkward ones slowly or not at all.

I believe that he began to have designs on the girl when he told P.C. Mohamed to take the husband to Sgt. Roger's room and that these desires strengthened when he began to measure the girl's body with his hands.

I reject his explanation that he "accidentally" told her he wanted to measure her. And I believe Hai Len's version that he told her that police regulations required this.

Nor was he able to offer any reasonable explanation as to why he had to take her into the Inspector's office at all. If he went there to find a note supposedly made by P.C. Mohamed, he did not need to take her.

Nor could he explain how it was that they remained in that office for five minutes without a word being spoken.

I have no doubt that the defendant's evidence as to what happened between him and Hai Len, both in the C.I.D. room and in the Inspector's office is untruthful and I reject it whenever it differs from hers.

It follows from the various findings that I am satisfied beyond reasonable doubt that the defendant is guilty of both the charges brought against him, the more serious offence of rape punishable under section 376 of the Penal Code and the lesser offence of outraging modesty under section 354 of the Penal Code, in relation to the assault on the girl during his measurement of her body shortly before the rape.

Sentence

The defendant has no previous convictions and had served in the police force for 8 years before this incident.

I give credit for the fact that no violence was used on the girl. But in this instance, her resistance was overborne not by physical force but by the power of his authority as a police officer.

It is a serious aggravation of what is in itself a grave crime, that the defendant abused his position of trust as a guardian of the law, with the duty to uphold it. Such conduct must constitute a blow to public confidence in the Force and damage the fine reputation which it has worked so hard to earn.

I believe that the public interest requires that there should be a heavy sentence for this offence, not only because of the outrage done to the girl but because of the injury done to the Force and to the community's trust in it.

I give weight also to the recent raising of the maximum sentence for rape from 15 to 30 years' imprisonment.

The sentence is one of 8 years' imprisonment on the first charge and 1 on the second, the sentences to run concurrently. They will run from today.

Convicted and sentenced accordingly.